

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of	)	
1991	)	
	)	

**NEWSLETTER & ELECTRONIC PUBLISHERS ASSOCIATION'S PETITION  
FOR RECONSIDERATION OR, ALTERNATIVELY, PETITION FOR STAY**

The Newsletter & Electronic Publishers Association ("NEPA") hereby petitions the Federal Communications Commission ("FCC") to reconsider its new regulations governing unsolicited facsimile advertisements pursuant to the Telephone Consumer Protection Act ("TCPA").<sup>1</sup> Specifically, NEPA respectfully requests that the FCC reconsider its determinations that (1) an "established business relationship" is insufficient to convey an invitation to send a facsimile advertisement and that (2) nothing less than written, signed consent is sufficient permission to send a facsimile advertisement.

In the alternative, NEPA requests that the FCC stay the effective date of its new regulations for a period of no less than six months.

**I. THE FCC SHOULD RECONSIDER ITS NEW FACSIMILE  
MARKETING REGULATIONS**

**A. The "Established Business Relationship" Exception Should Be Retained**

NEPA is a trade association representing publishers of some 3,000 newsletters and other specialized information services. As discussed more fully in NEPA's

---

<sup>1</sup> The Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 are published at 68 Fed. Reg. 44144 (July 25, 2003). The new rules pertaining to unsolicited facsimile solicitations are discussed at 68 Fed. Reg. 44167-44170.

comments filed Dec. 9, 2002 in response to the FCC's Notice of Proposed Rulemaking, the typical newsletter subscriber depends upon a given newsletter for specialized, accurate and up-to-the-minute information and analysis in a focused area. Unlike mass circulation newspapers and magazines, many newsletters eschew advertising to better maintain their editorial integrity and therefore the survival of a given newsletter may be wholly dependent on maintaining its subscription base. In addition, most newsletters serve business audiences rather than residential customers, with individual businesses themselves making up a significant portion of newsletter subscribers.

Newsletter publishers regularly use facsimile communications to correspond with their subscribers for a variety of purposes, including to facilitate subscription renewals, to announce trade conferences, to update business directory listings and to introduce new product listings. As one publisher explains, "Since the inception of fax machines, we have used this form of communication with literally thousands of our customers. The uses have been for marketing, but also for renewals, customer service problems, help-desk questions ... and countless other aspects of running our business."<sup>2</sup> As a result, the FCC's determination that an "established business relationship" is now insufficient to convey an invitation to send a facsimile is certain to have a detrimental financial impact on the newsletter publishing industry. For example, one newsletter publisher estimates that if "this new rule is left intact, we stand to lose approximately thirty percent of our conference revenue, twelve to fifteen percent of subscription revenue, have our hands tied behind our backs for updating our directories and will be unable to fulfill phoned-in

---

<sup>2</sup> Statement of Thomas J. Lydon, Vice President & General Manager, Mosaic Media, Inc., attached hereto as Exhibit A. To better illustrate the concerns of NEPA's members, attached hereto as exhibits A-E are statements concerning the repercussions of the new rules from a representative sample of newsletter publishers.

requests to fax information to existing and prospective customers.”<sup>3</sup> As another publisher has explained, “The new FCC regulations, as they are written, will effectively eliminate the fax as a means of communicating with our customers. The bottom line: A full eight percent of our annual revenue will disappear. A small company like ours simply cannot afford such a loss. I suspect other businesses will suffer even greater losses.”<sup>4</sup>

Furthermore, during the past decade in which the FCC has recognized the established business relationship exception, NEPA members have received few objections to fax solicitations received by those with whom individual publishers have such a relationship. Indeed, direct-to-business facsimile communications allow publishers to target those businesses most likely to be interested in their publications and therefore least likely to object, *i.e.*, those businesses who have affirmatively expressed an interest by subscribing currently or in the past.<sup>5</sup> For those few who do object, future facsimile transmissions can easily be prevented – even where there is an established business relationship – simply by registering that objection with the sender of the facsimile. Even assuming the penalties under the TCPA were not enough to ensure prompt compliance with a request not to fax by an existing customer, there is no incentive for a small business owner – particularly a newsletter publisher whose very livelihood is dependent on a limited subscription base – to violate such a request.

---

<sup>3</sup> Statement of Ira Mayer, President & Publisher, EPM Communications, Inc., attached hereto as Exhibit B.

<sup>4</sup> Statement of Brian McCallum, Publisher & Chief Operating Officer, WD&S Publishing, attached hereto as Exhibit C.

<sup>5</sup> In enacting the telemarketing portion of that TCPA, Congress specifically recognized that, where such an established business relationship exists, “consumers would be less annoyed and surprised by this type of unsolicited call since the consumer would have a recently established interest in the specific products or services.” H.R. Rep. No. 102-317, at 14 (1991).

Accordingly, newsletter publishers typically are “scrupulous in immediately removing any client who notifies us that they do not wish to be contacted by fax.”<sup>6</sup>

Of course, NEPA does not question the need for the FCC to regulate certain telemarketing practices. Nor does NEPA dispute that the public is understandably aggrieved by inappropriate marketing tactics. (Newsletter publishers also are on the receiving end of such tactics.) Nonetheless, the elimination of the established business relationship exception does not address the real problem of “unsolicited” facsimile advertising. As justification for its decision, the FCC observes that some individuals feel besieged by fax solicitations. *See* Report and Order, Rules and Regulations Implementing the Telephone Consumer Protection Act, at 111, ¶ 186 (July 3, 2003). But, even fully crediting such complaints, there is little evidence to suggest that this sentiment is the result of businesses sending facsimile solicitations to their current or recent customers. On the contrary, it appears that frustration with facsimile advertisements stems principally from the sending of facsimiles in circumstances in which there appears to be no established business relationship whatsoever. *See, e.g.*, Rules and Regulations Implementing the Telephone Consumer Protection Act, 68 Fed. Reg. at 44168, ¶ 132 (“The record in this proceeding reveals consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive.”). Thus, the end of the established business relationship exception promises the worst of both worlds:

---

<sup>6</sup> Statement of Robert K. Jenkins, President, Newsletter & Electronic Publishers Association, and, Publisher, Health Resources Publishing, attached hereto as Exhibit D.

Publishers will be denied a vital means of communication with their own subscribers and these subscribers will be denied information that they in fact do not object to receiving.<sup>7</sup>

As further justification for its decision to no longer recognize the established business relationship exception, the FCC also appears to suggest that it may have exceeded its authority in recognizing the exception in the first place. *Id.* at 44168, ¶ 131. This is simply not the case. The TCPA grants the FCC broad authority to implement the statute. *See* P.L. 102-243, at § 3 (Dec. 20, 1991) (granting FCC authority to “develop proposed regulations to implement the methods and procedures that the Commission determines are most effective and efficient to accomplish the purposes of this section.”). Furthermore, the language of the TCPA as enacted states that either “permission” or “invitation” is sufficient to grant consent to the sending of a fax solicitation. *Id.* The use of these words in the alternative by Congress suggests that there are multiple avenues of consent that would remove a facsimile transmission from within the definition of “unsolicited.” The FCC’s decision a decade ago that an established business relationship constitutes sufficient invitation to fax – in the absence of any request to the contrary – struck a reasonable balance between consumer privacy and the need for businesses to communicate with their customers. Opponents of this exception contend that, because the TCPA itself does not explicitly provide for such an exception, the FCC is without

---

<sup>7</sup> While NEPA believes the established business relationship exception should be maintained for all types of fax senders, at the least, it should be maintained for businesses that publish subscription-based and related products, who necessarily – and literally – have an ongoing relationship with the recipient throughout the life of the subscription. Should the FCC decline to recognize such an exception for businesses that publish subscription-based and related products, the FCC should clarify that renewal notices faxed to existing customers to notify them that a particular subscription is coming to an end are not “advertisements” within the meaning of the TCPA.

authority to recognize it. Such an argument proves too much: The rulemaking power granted to the FCC pursuant to the TCPA presupposes that the agency has the authority to create rules which, by definition, will add flesh to the skeletal outlines of the statute.<sup>8</sup>

#### **B. Written, Signed Consent Should Not Be Required To Send A Fax**

Even if the FCC were to adhere to its decision to no longer recognize the established business relationship exception, NEPA respectfully requests that the FCC reconsider its decision to require that nothing less than written, signed consent is sufficient permission to send a facsimile advertisement. *See Rules and Regulations Implementing the Telephone Consumer Protection Act*, 68 Fed. Reg. at 44177, proposed revisions to § 64.1200(a)(3)(i) (requiring that consent to receive a facsimile advertisement must be “evidenced by a signed, written statement”). Oral permission should be sufficient to grant permission to fax, along with other forms of consent that may fall short of a written, signed contract.

There is little justification for a written permission requirement from a consumer privacy perspective. On the contrary, consumers want the agency to stop facsimile solicitations sent *without any form of permission*. And that makes perfect sense: Why would any consumer object to receiving a facsimile that the consumer verbally requested? Indeed, Congress, in enacting the portion of the TCPA concerning automated

---

<sup>8</sup> It has also been noted that, in the telemarketing portion of the TCPA, Congress did explicitly provide for the recognition of an established business relationship exception. *See Rules and Regulations Implementing the Telephone Consumer Protection Act*, 68 Fed. Reg. at 44168, ¶ 131. That Congress took steps to ensure that such an exception was provided in the rules governing telemarketing need not necessarily be read as an intent to prohibit the FCC from enacting such an exception in the facsimile context pursuant to the FCC’s broad authority to regulate in this area. Notably, the statute does not prohibit the creation of such an exception by the FCC, nor has the Congress ever sought to undo the FCC’s recognition of the exception in the fax context, though it is within Congress’ power to do so.

calls, noted that it had deleted “the requirement that all consent must be in writing. Many persons order goods over the phone and may give their oral consent to being called back . . . . The reported bill allows the consent to be given either orally or in writing.” S. Rep. No. 102-178, at 5 (1991). It serves no purpose, either from a regulatory or a business perspective, to require customers who orally or otherwise request a facsimile to be compelled by law to fill out a consent form repeating that same request in writing. Such a requirement only increases consumer frustration with marketing solicitations. The written consent requirement is also particularly burdensome on small businesses such as newsletter publishers that have limited staff and resources. As one publisher observes, “If we were required to get signed approval to fax, we would be buried in paper – and most of these authorizations would be worthless within a short time due to regular changes in our customer contacts or fax numbers.”<sup>9</sup> In short, the requirement of obtaining and maintaining signed, written consent is an intolerable burden on small businesses that could become a significant drag on the nation’s economy.

Furthermore, while the FCC states that it would be sufficient under the new rules to obtain “an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law,” *see* Report and Order, Rules and Regulations Implementing the Telephone Consumer Protection Act, at 112, ¶ 187 n.691, this observation offers little practical assistance to small business owners. Given that many lawyers (and judges) disagree on what constitutes a binding digital signature in cyberspace – and which jurisdiction’s law

---

<sup>9</sup> Statement of Mike Gerecht, President, CD Publications, attached hereto as Exhibit E.

even applies in the first instance – it is unreasonable for the FCC to expect that newsletter publishers and other small business owners undertake an analysis of whether a particular electronic communication constitutes, in effect, an enforceable contract to send a facsimile. More importantly, such a requirement is wholly unnecessary. Even if an e-mail affirmatively requesting a facsimile falls short of having a binding electronic signature as defined by a particular state, there is no conceivable harm to the consumer by fulfilling such an “unsigned” but nevertheless affirmative request.

## **II. THE FCC SHOULD STAY ITS NEW FACSIMILE MARKETING REGULATIONS**

In the alternative, if the FCC declines to reconsider its new facsimile marketing regulations, NEPA respectfully requests that the FCC stay enforcement of the rules for a period of no less than six months in order to give newsletter publishers and other direct-to-business marketers more time to adjust their operations accordingly.<sup>10</sup> The new regulations are a dramatic departure from the FCC’s interpretation of the TCPA for the past ten years. Not only has the FCC eliminated the established business relationship exception, upon which newsletter publishers have routinely relied, but the FCC has also simultaneously eliminated the possibility of obtaining oral consent to fax. Newsletter publishers are now compelled to seek written permission from tens of thousands of their existing customers before the regulations take effect August 25. This simply cannot be

---

<sup>10</sup> A stay is also justified in order to give the numerous other opponents of the new regulations sufficient time to present their arguments in favor of reconsideration. *See, e.g.,* Newspaper Association of America Petition for Stay (filed August 8, 2003).



achieved in the thirty-day period between the publication of the new rules in the Federal Register and their effective date.<sup>11</sup>

Respectfully submitted,

By: /s/

---

Patricia M. Wysocki

Executive Director  
Newsletter & Electronic Publishers Association  
1501 Wilson Boulevard, Suite 509  
Arlington, Virginia 22209  
(703) 527-2333  
(703) 841-0629 (Facsimile)

---

<sup>11</sup> Even assuming the Office of Management and Budget's review of the new regulations' record-keeping requirements delays their effective date by some additional period of time, a longer stay is still necessary to afford publishers a reasonable window of opportunity in which to seek written consent.

# **MOSAIC MEDIA, INC.**

2055 Army Trail Road, Suite 100  
Addison, Illinois 60101  
Phone 630-628-0500  
Fax 630-628-0550  
www.mosaicpubs.com

Chairman Michael K. Powell  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington DC, 20554

July 31, 2003

Re: FAX delivery requirements, FCC final ruling language, Section 64.1200.

Dear Chairman Powell,

Mosaic Media Inc. is a 27 year-old publishing company in Addison, Illinois. At this point in time we have been struggling with terrible economic conditions for the past two to three years and are now faced with the potential loss of a significant amount of business as a direct result of the above referenced FCC ruling.

Since the inception of FAX machines, we have used this form of communication with literally thousands of our customers. The uses have been for marketing, but also for renewals, customer service problems, help-desk questions (a free fax service we provide) and countless other aspects of running our business. As a newsletter publisher the use of the FAX machine is one of our least expensive forms of communication.

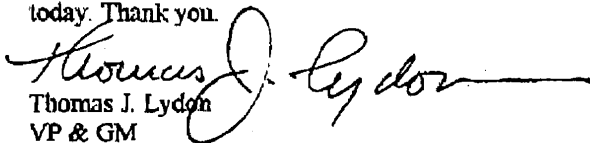
The newly proposed FCC language would effectively require us to re-contact tens of thousands of customers, at no small cost, to obtain their written permission to continue to fax to them. Not to mention the customers time and energy required in responding to each and every vendor or company that they do business with. Something is definitely not right here!

I should mention that we have always aggressively offered a "Remove from FAX" option on all of our faxes and we have removed from our database anyone who requests such. This system has worked extremely well for our customers and for the company for several years. The new FCC language, by not allowing existing business relationships to continue is totally anti-business.

If the issue is "UNSOLICITED FAXES" from "UNKNOWN THIRD PARTIES" then that is what should have been addressed by this legislation. The change as worded today will definitely damage our business and cost us customers and revenue at a time when we can least afford it.

Please consider the impact this proposal will have on all of the businesses trying to recover from the recent economic disasters...DOT COM collapse, 9/11, recession and recent geo-political situations. The language in this FCC ruling will now add to this litany of business problems.

We appreciate your listening and we hope that you will understand the concern of all business constituents in this matter. We hope to hear that this language is changed to allow existing businesses to continue to use this cost effective tool for communications without having to re-solicit every piece of business or customer that we have today. Thank you.

  
Thomas J. Lydon  
VP & GM

Mosaic Media Inc.  
2055 W. Army Trail Rd. Suite 100  
Addison, IL 60101  
Phone: (630) 628-0500 Ext. 221  
FAX: (630) 628-0550  
E-mail: [tlydon@protrain.com](mailto:tlydon@protrain.com)

**IRA MAYER**

President & Publisher  
212-941-1633, ext. 27  
imayer@epmcom.com

**NEWSLETTERS**

Entertainment Marketing Letter  
The Licensing Letter  
Marketing To The Emerging Majorities  
Marketing To Women  
Research Alert  
Youth Markets Alert

**DIRECTORIES**

Entertainment Marketing Sourcebook  
Licensing Letter Sourcebook

**BOOKS**

Research Alert Yearbook  
All About Women Consumers  
The Licensing Business Handbook

**RESEARCH STUDIES**

Marketing To Teens & Tweens  
Marketing To The 50+ Population  
The EPM Fad Study  
International Licensing: A Status Report  
Licensing Business Databook  
Best Practices In Trademark Licensing

**WHITE PAPERS**

12 Keys To The Women's Market  
Wireless Entertainment Marketing  
Exclusivity In Marketing

EPM Communications, Inc.  
160 Mercer St., 3rd Floor  
New York, NY 10012  
Phone: 212-941-0099  
Fax: 212-941-1622  
Web: www.epmcom.com

August 6, 2003

Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Dear Commissioners:

I'm prompted to write by new rules issued by the FCC and published in the Federal Register regarding fax marketing. The new rules do not permit routine faxing to companies with which you have an existing business relationship without prior written consent.

We publish newsletters, directories and research studies, and produce a couple of long-running conferences for our subscribers. For our business, the elimination of the ability to fax to people with whom we have an existing business relationship means:

- When someone SAYS, "Fax me a sample issue of that newsletter," we can't.
- When someone SAYS, "Fax me a table of contents for that research study," we can't.
- When someone sends an e-mail asking us to, "Fax the agenda for the conference," (which is easier to read as a fax than as an e-mail) we can't.
- When someone SAYS, "Fax me an invoice," we can't.
- They can't fax us to request any of these things.
- We can't fax a notice to customers that says their subscription has expired (approximately 10% of our subscribers renew in response to fax notices).
- We can't fax registration forms to past conference attendees (approximately 30% of our conference registrations are via fax).

This will impact many businesses in similar ways. But let me give you a little background and perspective from one on whose legitimate business these new rules will have a devastating effect:

My wife and I started our business in our home in Brooklyn, New York. In fact, we started our first newsletter by faxing a one-page letter over the course of a weekend to people I'd been doing business with, describing the newsletter and telling them that if they wanted to subscribe, they should initial the letter and fax it back to us. This was in 1988, when sending several hundred faxes meant sitting at the machine and hand feeding each one, which we did after 7 pm., when rates went down. That Monday morning we had three orders!

Eight years ago, the company had grown to the point that we moved the office out of our house. Today, we have 12 full-time year-round employees; during the summer we hire seven college students to work full-time on several annual projects.

Much as e-mail has grown in popularity, faxing continues to be a routine part of most business operations today, including ours. People call and want to order a study, and they ask us to fax them a table of contents, or a sample chapter or a bill.

We send important news alerts to our subscribers -- usually by e-mail, but if we don't have their e-mail address, we fax them in order to reach them in a timely manner.

EXHIBIT B

We use e-mail, fax and phone to update two annual business directories that we have been selling for more than 10 years each; these directories are highly regarded -- one was just endorsed by the leading trade association in the business because it is so widely referred to as "the bible of the business." To maintain its quality and credibility, we find it necessary to fax some of the companies to obtain current information.

The most successful marketing we do for our conferences is via fax because we can boil everything down to two pages: an agenda and a registration form. The agenda is easier to read and the registration form easier to fill out than e-mail versions. (Yes, they receive similar fliers by mail, but as stated, a substantial portion of registrations come in by return fax.)

If a customer asks us not to fax them, we put that in their record, and we don't fax them. Ditto for e-mail. But the FCC rules mean we can no longer communicate routinely with customers accustomed to being reached by fax. Also, faxes are far more timely than printed matter. The turnaround time is much faster, so we can be more current.

From a practical standpoint, and on many counts, asking customers to give us written permission to fax them is ludicrous.

If this new rule is left intact, we stand to lose approximately 30% of our conference revenue, 12%-15% of subscription revenue, have our hands tied behind our backs for updating our directories and will be unable to fulfill phoned-in requests to fax information to existing and prospective customers (the latter when they've asked to be contacted).

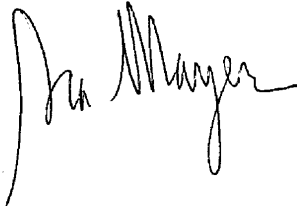
Our business has already diminished due to the economy. Now, unless the "existing business relationship" exemption is re-instated, we stand to lose even more. I doubt we could survive as a company.

We're a small example. But we are also members of the Newsletter & Electronic Publishers Association, whose membership includes everything from one-person publishing operations to multi-billion dollar conglomerates. We are legitimate marketers, doing legitimate business. Please visit our website, [www.epmcom.com](http://www.epmcom.com), or the association website, [www.newsletters.org](http://www.newsletters.org) if you wish to see the scope and quality of our publications and other offerings.

All too often, these rules and regulations are created without thought to the practical implications. This is one of those instances, and this particular rule needs to be reconsidered promptly.

I urge you to see to it that "existing business relationships" are re-instated into the FCC fax rules so that we and others can continue to reach our customers.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Dan Mayer". The signature is fluid and cursive, with a long, sweeping underline that extends to the left.



1200 Tices Lane, Suite 205  
East Brunswick, NJ 08816  
800-321-5312  
Fax: 800-314-4770  
www.dealersedge.com

August 5, 2003

Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20544

RE: Removal of "prior business relationship"  
exemption for business to business faxes

To whom it may concern:

WD&S Publishing has been providing information products to franchised automobile dealerships for more than 20 years. Like many small businesses, every communication channel is critical to our success. To reach this highly targeted group of business professionals we rely on mail, email, telephone and fax.

For years we have used faxes to send our customers both information updates and product announcements specific to dealerships. In every way possible we act in the best interests of our market and the spirit of the FCC rules. We send only broadcasts targeted to the needs of dealership managers. We fax only to our customers and include "opt out" information on every transmission. We don't make our list available to other companies. We maintain an updated list of those requesting to be removed from our list.

The new FCC regulations, as they are written, will effectively eliminate the fax as a means of communicating with our customers. The bottom line: A full 8% of our annual revenue will disappear. A small company like ours simply cannot afford such a loss. I suspect other businesses will suffer even greater losses. That means fewer jobs and another blow to our already fragile economy.

I encourage you to reevaluate the rationale for these new rules. Are you really trying to eliminate faxing as a means of customer communication or are you trying to stop the blatant abuses of a few unethical marketers?

Cordially,

A handwritten signature in black ink, appearing to read 'B. McCallum', written in a cursive style.

Brian McCallum  
Publisher/COO

# Health Resources Publishing

1913 Atlantic Ave., Suite F4, Manasquan, NJ 08736 • (732) 292-1100 • Fax: (732) 292-1111 • E Mail: [info@healthrespubs.com](mailto:info@healthrespubs.com)  
[www.healthrespubs.com](http://www.healthrespubs.com)

---

August, 13, 2003

Federal Communications Commission  
 445 12<sup>th</sup> Street, S.W.  
 Washington, DC 20554

Dear Commissioners:

As a small businessman I am very concerned about the serious financial impact of the proposed FCC requirements for fax solicitation.

Although the proposed final rule seems to make common sense from a consumer perspective, and although the FCC's solution to obtain permission to send a fax seems like a fairly simple-to-do thing the regulation is flat-out anti-business.

I am writing in two capacities as the owner and publisher of Health Resources Publishing, in Manasquan, N.J., and as president of the Newsletter and Electronic Publishers Association (NEPA,) the trade association for those of us in the subscription newsletter business.

Approximately 600 companies are members of NEPA ranging from tiny one-person operations to multi-national companies producing subscription newsletters on virtually every subject including business-to-business.

Health Resources Publishing serves healthcare administrators and manage care organization executives with management-related newsletters, reports, yearbooks and directories. We have a 20-person staff comprised of journalists, marketing and customer service personnel. There is only one clerical person on the staff.

The majority of NEPA's members have been suffering from the effects of the nation's poor economy. And, the majority of members are classified as small business.

Aside from the timing of this rule, in the midst of the toughest economic climate for publishers in the 25 years I have been in business that for us began with the September 11 attacks, the requirements effectively disable a significant "tool" in our sales and marketing methods.

Health Resources Publishing only makes sales through direct mail, fax communications, and more recently e-mail. We do not have an outside field sales staff nor does the economics of this business permit it. Likewise, magazine advertisements are not economically viable as a sales choice.

We have abided by and relied upon the FCC's existing business relationship provisions and are scrupulous in immediately removing any clients who notifies us that they do not wish to be contacted by fax.

The revised rule's requirement that signed copies of consents to receive fax marketing documents be kept on file places a heavy and unrealistic paperwork burden on most companies, especially small companies.

As an example, one of NEPA's member publishers serves some 70,000 subscribers. The administration and record-keeping imposed by the FCC's rule, would require additional full time equivalent positions and impose an extremely unfair payroll cost burden on the company.

During a period in which we have not filled vacant positions, cut employee's hours, and have a payroll freeze, it will be a grossly unfair payroll cost burden to have to hire someone to maintain the consent records in compliance with the FCC rule.

Faxing of renewal notices, statements of account, re-instatement notices, expire marketing, and marketing books, reports, directories and CD-ROMs to our client base is an integral part of our business.

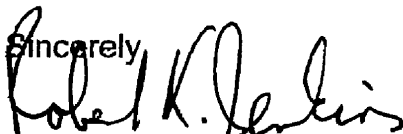
Specific fax marketing to that portion of our buyer file that bought off a fax, is a part of our routine. "Renew 'em, the way ya got 'em."

We also immediately honor requests to be removed from the fax list and have a system in place that maintains the "do not fax" list.

The FCC rule change will materially hurt not just our businesses but all the companies who rely to some extent on the fax as a tool of our trade.

I do not believe that the FCC has fairly considered the extreme paperwork burden, the additional staff cost and record keeping burden to business that this rule imposes.

I respectfully request that the FCC re-instate the earlier rule form relative to the established business relationship provision.

Sincerely,  


Robert K. Jenkins  
Publisher, Health Resources Publishing  
President, Newsletter & Electronic Publishers Association



# CD Publications

8204 Fenton Street, Silver Spring, MD 20910-4571 Phone 301-588-6380 Fax 301-588-6385  
E-mail: [info@cdpublications.com](mailto:info@cdpublications.com) Website: [www.cdpublications.com](http://www.cdpublications.com)

August 7, 2003

Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

To Whom It May Concern:

The FCC's new regulations regarding commercial faxes would have a significant adverse impact on our small publishing business and we ask that you reconsider these regulations.

CD Publications is a small business with about 65 employees and thousands of customers nationwide. We have been publishing newsletters for over 40 years. These regulations would impose significant hardship on our business—and conducting business is already difficult enough for the small business community.

While we respect the wishes of those who don't want faxes, requiring signatures giving us permission to fax is entirely different. We give people an option not to receive faxes and we honor those requests. If we were required to get signed approval to fax, we would be buried in paper—and most of these authorizations would be worthless within a short time due to regular changes in our customer contacts or fax numbers.

An integral part of our operation is calling past due customers and customers who have not renewed their subscriptions—subscriptions they may have gotten for years. They often ask we fax an invoice to avoid interruption in service. Under these regulations, we could no longer honor their request without first asking for a signed ok. If they asked for promotional copy to be faxed, we'd first have to ask them to fax their consent.

In an age of email clutter, the fax remains an excellent tool to quickly convey an "urgent" message—a quick reminder of a conference or fast approaching deadline. Providing our customers with such information quickly and cost-effectively is vital to our success—and thus to our customer's success.

We further understand that even faxing directory updates without written permission would be a violation—not withstanding the fact a business may have sent us information to include in a directory in the first place. As a small business receiving incoming faxes regularly, we do not consider excessive or unwanted faxes a problem, which would indicate current law and the economics of faxing have largely resolved this issue.

In light of the significant harm posed by this regulation to the very businesses it seeks to protect—harm that far outweighs any benefit—we respectfully ask that you reconsider this ruling. Thank you.

Sincerely,

Mike Gerech  
President  
CD Publications